

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES D. PIERON, JR.,

Defendant.

Case No. 18-cr-20489 (TLL)(PTM)
Hon. Thomas L. Ludington

**RESPONSE TO GOVERNMENT'S
MOTION TO STRIKE TAX LOSS EXHIBITS**

The Federal Rules of Evidence do not apply to sentencing proceedings.

Because of this, defense counsel asked how to proceed with evidence during Pieron's tax loss hearings, including whether exhibits should be formally moved into evidence. (R. 144: Dec. 20, 2019 Tr., at PgID 3308–09.) This Court responded, “I just want to make sure that the record referenced by the witness to a particular exhibit is clear. . . . The key thing . . . is that we have a reference to the document that would enable the appellate court to get to the exhibit.” (*Id.* at 3309.) Not until the final tax loss hearing did the Court refuse to accept an exhibit into evidence. (R. 151: Feb. 5, 2020 Tr., at PgID 3764, 3767–68.)

If the Court now wishes to delineate exhibits “received into evidence” during the tax loss hearings, Pieron will refile his Index of Tax Loss Hearing

Exhibits and indicate which exhibits have been formally admitted.¹

Notably, few of the Government's own tax loss exhibits were received by the Court into evidence during the sentencing hearings. Government Exhibits 19–20, 34–38, 43, 91, 102, 115, 119, 129, 171, 205, 210–216, 221, and 501–506, which the Government made part of the record through its briefing and other filings, *see, e.g.*, (R. 133–34: Additional Exs. For Intended Tax Loss Hr'g), have not been formally admitted.

Grand Jury testimony of SA Scott Hollabaugh

The government refers to the filing of the grand jury transcript as “disturbing” and argues it violated this Court’s Order. (R. 149, at PgID 3731.) In opposing Pieron’s motion to compel SA Hollabaugh’s testimony, however, the same government stated “Pieron can offer all or part of Hollabaugh’s grand jury testimony to the court if he deems that helpful to his case.” (R. 140, at PgID 3207.)

Upon information and belief, the government itself has made numerous

¹ Defense Exhibits 3–6 and 24 were formally admitted. *See* (R. 144 at PgID 3315–16, 3333, 3365–66). Defense exhibits 12–16, 22, 27, 28, 32, 38, 39, 45, and 47 were made part of the record through Defendant’s tax loss briefing. *See* (R. 132; R. 143; Def.’s Initial Suppl. Br. on Tax Loss, filed under seal July 22, 2019; Def.’s Suppl. Br. Concerning Tax Loss, filed under seal Oct. 11, 2019). Defense Exhibit 30, while not admitted into evidence, was used by the Government during Chelsea Rebeck’s cross-examination. *See* (R. 139: Nov. 14, 2019 Tr., at PgID 3185 *et seq.*).

public filings of grand jury materials in this case.² It has stated, for instance, that “[t]he records [SA Hollabaugh] collected during his participation in the investigation prior to indictment, including the bank records at issue, were not obtained through any IRS administrative process, but rather, through grand jury subpoenas.”³ (*Id.*) Now, because the government does not want a record of its own case agent’s testimony that the government’s tax loss position is incorrect, it invokes a rule it consistently disregarded.

² Pieron uses the phrase “upon information and belief” because the government refuses to identify which materials were obtained in response to grand jury subpoenas.

³ Accordingly, the following public docket entries likely contain grand jury materials: R. 114-23: Gov. Ex. 57; R. 114-24: Gov. Ex. 58; R. 114-25: Gov. Ex. 61; R. 114-26: Gov. Ex. 62; R. 114-27: Gov. Ex. 63; R. 114-34: Gov. Ex. 91; R. 114-39: Gov. Ex. 102; R. 114-40: Gov. Ex. 103; R. 114-42: Gov. Ex. 106A; R. 114-43: Gov. Ex. 106B; R. 114-44: Gov. Ex. 106C; R. 114-45: Gov. Ex. 107A; R. 114-46: Gov. Ex. 107B; R. 114-47: Gov. Ex. 108A; R. 114-48: Gov. Ex. 108B; R. 114-49: Gov. Ex. 109; R. 114-50: Gov. Ex. 110; R. 114-51: Gov. Ex. 111; R. 114-52: Gov. Ex. 112; R. 114-53: Gov. Ex. 113; R. 114-54: Gov. Ex. 114; R. 114-55: Gov. Ex. 115; R. 114-56: Gov. Ex. 116; R. 114-57: Gov. Ex. 117; R. 114-60: Gov. Ex. 120A; R. 114-61: Gov. Ex. 120B; R. 114-62: Gov. Ex. 120C; R. 114-63: Gov. Ex. 120D; R. 114-64: Gov. Ex. 120E; R. 112-65: Gov. Ex. 120F; R. 114-66: Gov. Ex. 120G; R. 114-67: Gov. Ex. 120H; R. 114-68: Gov. Ex. 121A; R. 114-69: Gov. Ex. 121B; R. 115-70: Gov. Ex. 121C; R. 114-71: Gov. Ex. 122; R. 114-72: Gov. Ex. 124; R. 114-73: Gov. Ex. 125; R. 114-75: Gov. Ex. 127; R. 114-76: Gov. Ex. 128; R. 114-77: Gov. Ex. 130; R. 114-78: Gov. Ex. 131; R. 114-79: Gov. Ex. 132; R. 114-80: Gov. Ex. 133; R. 114-81: Gov. Ex. 134; R. 114-82: Gov. Ex. 135; R. 114-83: Gov. Ex. 136; R. 114-84: Gov. Ex. 137; R. 114-85: Gov. Ex. 138; R. 114-86: Gov. Ex. 168; R. 114-87: Gov. Ex. 169; R. 114-88: Gov. Ex. 170; R. 114-89: Gov. Ex. 171; R. 114-93: Gov. Ex. 174; R. 114-94: Gov. Ex. 175; R. 114-95: Gov. Ex. 176.

At this time, as is required by this Court's October 29, 2018 Order, Pieron asks this Court for permission to file the grand jury transcript of SA Hollabaugh's testimony. Undersigned counsel has used the transcript only as necessary in representing Mr. Pieron, pursuant to the Order, and will continue to adhere to the Court's requirements regarding retention and custody of grand jury materials.

Pieron also seeks the government's cooperation in these efforts. If, for example, the government persists in its refusal to identify which materials were obtained in response to grand jury subpoenas, Pieron is unable to comply with the Court's protocols for filing such evidence. Pieron will seek permission to file any grand jury materials that have been used, or will be used, in his defense, but the government must provide information necessary to do so.

Respectfully submitted,

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Dated: February 19, 2019

CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2019, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to all counsel of record.

Respectfully submitted,

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